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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,623	09/14/2000	Dennis Cherok	D0188/7125	8712

7590 06/08/2006  
Jason M Honeyman  
Wolf Greenfield & Sacks P C  
600 Atlantic Ave  
Boston, MA 02210

EXAMINER

MATTHEWS, WILLIAM H

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 06/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/661,623

Applicant(s)

CHEROK ET AL.

Examiner

William H. Matthews (Howie)

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7, 14-21, 29-45 and 54-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 37-45 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 14-21, 29-32, 34-36, 54-56, 58 and 59 is/are rejected.
- 7) ☒ Claim(s) 4, 33 and 57 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10-4-05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 10-4-05 has been entered.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3,5-7,14-17,20,29-32,34,35,54-56,58 are rejected under 35 U.S.C. 102(b) as being anticipated by Meier US PN 3,416,524.

Meier disclose in figures 1, 2, and 4 an implantable prosthesis for repairing tissue defects comprising layer of repair fabric 14 and barrier layer 15, wherein the peripheral edge of the repair fabric is adapted to inhibit the formation of adhesions by peripheral barrier 12. The peripheral barrier 12, barrier layer 15, and fabric 14 are shown as

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tapering towards the outer edge of the device in figure 4. Lines 55-70 of col. 1 describe the fabric layer comprising polypropylene.

4. Claims 1,2,14,15,20 are rejected under 35 U.S.C. 102(e) as being anticipated by Ory et al. US PN 6,264,702.

Ory et al. disclose in figure 1 an implantable prosthesis for repairing tissue defects comprising layer of repair fabric 4 and barrier layer 3, wherein the peripheral edge of the repair fabric is adapted to inhibit the formation of adhesions by peripheral barrier (extended region of barrier layer 3, described at lines 26-30 of col. 4) which protects the peripheral edge from forming adhesions with adjacent organs.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 16-19,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ory et al. US PN 6,264,702 as applied to claims 1,2,14,15,20 above, and further in view of Sharber US PN 6,075,180.

Ory et al. discloses the limitations of claims 16-19 and 21 as described above, but lacks the express written disclosure of the having PTFE sutures connecting the barrier and repair fabric layers, or that the barrier layer be made of ePTFE. Sharber

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teach in lines 54-67 of col. 1 it is well known to use PTFE suture and ePTFE barrier layer for hernia repair surgery in order to reduce negative reactions after implantation.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to include PTFE suture and ePTFE barrier layer as taught by Sharber in order to reduce negative reactions after implantation.

7. Claims 21,36,59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meier US PN 3,416,524 as applied to claims 1,20,29,35,54,58 above, and further in view of Eldridge WO 98/49967.

Meier discloses the limitations of claims 21,26,59 as described above, but lacks the express written disclosure of the adhesion resistant barrier layer comprising ePTFE. Eldridge teach in lines page 4 line 26 to page 5 line 2 that barrier layers may be made of PTFE in order to reduce postsurgical adhesions.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to include ePTFE barrier layer as taught by Eldridge in order to reduce post surgical adhesions.

***Allowable Subject Matter***

8. Claims 37-45 are allowed.

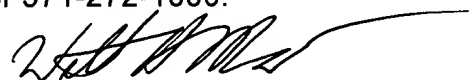
9. Claims 4,33,57 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number is 571-272-4753. The examiner can normally be reached on Monday-Friday 10-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



William H. Matthews (Howie)  
Examiner  
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